Supreme Court, U. S.
FILED
MAY 30 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979.

No. 79-1815

DR. LEON SALOB,

Petitioner,

against

GORDON M. AMBACH, Commissioner of Education of the State of New York, NEW YORK STATE EDUCATION DEPARTMENT and THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondents.

Supplementary Appendix to Petition for Writ of Certiorari to the United States Supreme Court from the Court of Appeals of the State of New York.

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New York Supreme Court, Appellate Division, Third Judicial Department Opinion, Dated December 20, 1979

SUPREME COURT,

APPELLATE DIVISION—THIRD JUDICIAL DEPARTMENT.

December 20, 1979 35953

IN THE MATTER

of

LEON SALOB,

Petitioner,

v.

GORDON AMBACH, as Commissioner of Education of the State of New York, *et al.*,

Respondents.

Proceeding initiated in this court, pursuant to section 6510 (subd. 4) of the Education Law, to annul a determination of the Commissioner of Education suspending petitioner's license to practice chiropractic.

Petitioner, a chiropractor, was charged with practicing the profession of chiropractic beyond its authorized scope and with unprofessional conduct within the purview and meaning of subdivisions (2) and (9) of section 6509 of the Education Law. In the first specification charging petitioner with practicing the profession of chiropractic beyond its authorized scope, it was alleged that petitioner, while not authorized to use X-rays, did

in fact X-ray an agent of the New York State Education Department at his chiropractic office on or about May 19, 1978. Petitioner was charged in the second specification with unprofessional conduct based upon the conduct set forth in the first specification. He was also charged with additional acts of unprofessional conduct in the second specification, including wilfully misrepresenting to the State Education Department that he would not X-ray patients until duly licensed; holding himself out as being able to practice acupuncture; engaging in deceptive and misleading advertising; using the word "Doctor" with his name without indicating the profession in which he held a doctorate; claiming professional superiority or special professional abilities in an area in which he was not qualified or certified to practice; and practicing the profession of chiropractic under an assumed name without registering the assumed name with the County Clerk.

A hearing was held at which an investigator for the State Education Department testified that on three occasions he visited petitioner's office which was attached to his home; that he photographed a prominent sign outside petitioner's office stating "Acupuncture"; that in the reception area of the office he took petitioner's business card from a rack on the wall and some pamphlets concerning acupuncture and X-ray; that on May 19, 1978 petitioner took an X-ray of the investigator at his office; and that on June 2, 1978 petitioner again reviewed the X-ray with him and then gave him the X-ray because he told petitioner he thought it best to seek treatment closer to home. The hearing panel found petitioner guilty of each of the charges. The panel recommended a two-year suspension on each of the specifications, to run concurrently, and that the final 15 months of the suspension be stayed and petitioner be placed on probation for seven years. Thereafter, the Regents Review Committee unanimously adopted the findings of the hearing panel, but recommended modification of the period of probation to five years. The Board of Regents accepted the recommendations of the Regents Review Committee. On June 11, 1979, the Commissioner of Education executed the order effectuating the decision of the Regents. This article 78 proceeding ensued to annul the order of the Commissioner of Education.

Initially, petitioner contends that the pamphlets and other materials taken from his office should not have been admitted into evidence at the hearing because they were removed without an administrative warrant in violation of the Fourth and Fifth Amendments of the United States Constitution. The protection against unreasonable searches and seizures, however, does not extend to property knowingly exposed to the public, even in a person's own home or office (*Katz v. United States,* 389 U. S. 349, 351). The materials in question were taken from the area of petitioner's office open to the public and, accordingly, they were properly admitted.

We reject petitioner's argument that the X-ray admitted into evidence should have been suppressed on the ground that it was not properly identified as an X-ray of the investigator. Identification of the X-ray raised a question of fact for resolution by the triers of fact (*Matter of Shepard v. Ambach,* 68 A. D. 2d 984). The finding as to identification is, in our view, supported by substantial evidence and should not be disturbed.

Petitioner's contention that the claim of custody of the X-ray was not established must also be rejected. There existed reasonable assurances of the identity and unchanged condition of the X-ray and, consequently, it was properly ruled admissible (*People v. Julian,* 41 N. Y. 2d 340, 343).

Based upon our examination of the entire record, it is the opinion of this court that the determination of the Commissioner of Education is supported by substantial evidence, and, therefore, it should be confirmed (*Matter of Sang Moon Kim v. Ambach,* 68 A. D. 2d 986). We have considered petitioner's remaining arguments and find them unpersuasive.

Determination confirmed, and petition dismissed, without costs.

Mahoney, P. J., Greenblott, Sweeney, Staley, Jr., and Mikoll, JJ., concur.

New York Supreme Court, Appellate Division, Third Judicial Department Order, Dated December 26, 1979.

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Third Judicial Department at the Justice Building, in the City of Albany, New York, commencing on the 13th day of November, 1979.

Present:

Hon. A. Franklin Mahoney,
Presiding Justice,
Hon. Louis M. Greenblott,
Hon. Michael E. Sweeney,
Hon. Ellis J. Staley, Jr.,
Hon. Ann T. Mikoll,
Associate Justices.

IN THE MATTER

of

The Application of LEON SALOB,

Petitioner,

against

GORDON M. AMBACH, Commissioner of Education of the State of New York, NEW YORK STATE EDUCATION DEPARTMENT and THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondents.

The petitioner, Leon Salob, having instituted this proceeding pursuant to Education Law §6510, subd. 4, to review an order of the Commissioner of Education which suspended his license as a chiropractor in the State of New York for a period of twenty-four months but stayed the last fifteen months and placed petitioner on probation for that period under stated terms; and the said proceeding having been argued during the above stated term of Court by James J. Hanrahan, Esq., of counsel for petitioner, and by John J. O'Grady, Assistant Attorney General, of counsel for the respondents, and after due deliberation, the Court having rendered a decision on the 20th day of December, 1979, it is hereby

ORDERED, that the determination be and the same is hereby confirmed and the petition is dismissed without costs.

Dated and Entered: December 26, 1979.

Enter

JOHN J. O'BRIEN
Clerk

A True Copy
JOHN J. O'BRIEN
Clerk

(Seal.)

Decision of Burton G. Roberts, Justice of Supreme Court, State of New York, October 25, 1978.

SUPREME COURT OF THE STATE OF NEW YORK,

NEW YORK COUNTY,

Special Term, Part 1A,

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. Burton G. Roberts, Justice.

In *re:* LEON J. SALOB.

The following papers numbered 1 to read on this motion No. on Calendar of Oct. 23, 1978 submitted

	Papers Numbered
Filed Order to Show Cause and Affidavits Annexed	1 and 2
Answering Affidavit	4-6
Admission Affidavit of Service	3
Pleadings—Exhibit	7

Upon the foregoing papers this motion by defendant for multiple disclosures is denied. As stated in *Anyone v. State Liquor Authority,* 47 M. 2d 809, 810, "This Court will not interfere in any pending matter before an administrative agency.

However, as such time as the hearings are completed and a final determination is rendered and error alleged to have been committed by the hearing officer is subject to the view of this Court * * *." See also *Taibbis v. State Liquor Authority,* 48 A. D. 2d 569. A copy of this order with notice of entry shall be served no later than 30 after publication hereof.

Dated 10-25-78

BURTON G. ROBERTS
J. S. C.

County Clerk's No. 17966, 1978
Spec I Liber S266, Line 2, 1978

Briefs: Petitioner's X Respondent's X

Filed
Nov. 2, 1978
New York
Co. Clerk's Office

Order, With Notice of Entry, Duly Filed November 2, 1979.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK. 17966/78

In *re:* LEON J. SALOB.

Sirs:

Please Take Notice, that the annexed order is a copy of an order duly entered in the above entitled action and filed in the office of the Clerk of the County of New York on the 2nd day of November, 1978.

Dated: New York, New York
3rd day of November, 1978

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General
Attorney for the New York State
Education Department
Office and P. O. Address
622 Third Avenue
New York, New York 10017

To:

James J. Hanrahan
Attorney for Leon J. Salob, D. C.
202 East 110th Street
New York, New York 10029

Filed
Nov. 9, 1978
New York
County Clerk's Office

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Mr. Hanrahan: I am going to object to does this memo actually reflect—

This man is reading from his memo and he is answering the question.

We do not have testimony here.

There has been no question of foundation laid for the witness' failure to remember and I think that is highly improper now, at this late stage of the game to be asking him proper redirect questions, to be laying no foundation for refreshment of the evidence and it is leading to a disorganization here with respect to not only no rules of evidence, but any semblance of evidence.